

PT 01-58

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

HOLY CROSS LUTHERAN CHURCH

Applicant

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

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A.H. Docket #

00-PT-0016

Docket #

99-60-148

Parcel Index # 13-2-21-33-12-201-031

Barbara S. Rowe

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Paul A. Welch for Holy Cross Lutheran Church.

Synopsis:

The hearing in this matter was held at the State of Illinois Administration Complex in Collinsville, Illinois on June 28, 2000, to determine whether or not Madison County Parcel Index No. 13-2-21-33-12-201-031 qualified for exemption during the 1999-assessment year.

Wayne Iehl, resource manager of Holy Cross Lutheran Church, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1999-assessment year; secondly, whether the applicant is a religious organization; and lastly, whether the parcel was used by the applicant for exempt purposes during the 1999-assessment year. After a through review of the facts and law presented, it is my recommendation that the exemption be granted for the period of March 1, 1999 through December 31, 1999. In

support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

Findings of Fact:

1. The jurisdiction and position of the Department that Madison County Parcel Index No. 13-2-21-33-12-201-031 did not qualify for a property tax exemption for the 1999-assessment year was established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 6)

2. The Department denied the requested exemption finding that the property was not in exempt use. (Dept. Ex. No. 1)

3. The applicant acquired the subject parcel March 1, 1999, by a warranty deed. (Dept. Ex. No. 1)

4. The subject parcel is adjacent to the applicant's church and grade school. The applicant purchased the property to allow for future expansion of the current church and school facilities. (Applicant's Ex. Nos. 1,4, 5 & 6; Tr. pp. 15-19, 24, 35, 41)

5. Located on the subject parcel is a two-story frame house. In 1999 ministers of religion and their families lived in the house. (Dept. Ex. No. 1; Tr. pp. 29-31, 53-54)

6. At the time of purchase, the house on the property in question needed renovation. From March through June 1999, the applicant cleaned, landscaped, and repaired the premises. (Applicant's Ex. No. 1; Tr. pp. 14-15, 24-25, 32)

7. Roy and Mary Hamrick moved into the house on the subject property on July 21, 1999. Mary Hamrick is a commissioned Minister of Religion. The applicant elected her as a teacher on June 14, 1999, as a member of the Lutheran Church-Missouri Synod. She is listed on the official teacher roster of the synod as a minister of religion. Roy Hamrick is a ministry student at Concordia, a Lutheran seminary in St. Louis. (Applicant's Ex. No. 1; Tr. pp. 20-22, 25-27, 33, 35-36, 40-47, 51-52)

8. The applicant already owned the house when the Hamricks were called to the ministry with the church and school. Salaries paid to Lutheran called teachers are much lower than those paid to a public school teacher. The property at issue is about 50 feet from the building structures on applicant's adjacent property. (Tr. pp. 23-24)

9. The minister is required as a condition of employment or association with the applicant to reside in the parsonage on the subject property. (Dept. Ex. No. 1)

10. On July 21, 1999, a "lease" was executed for the subject property between the applicant and Roy and Mary Hamrick for a monthly rent of \$600.00. The Hamricks could not afford and therefore did not pay \$600.00 monthly. (Applicant's Ex. No. 1; Tr. pp. 20-21)

11. The applicant developed the lease because the property tax forms ask for various documents including a lease. When the applicant read that, it thought that it ought to have a lease. In its request for a hearing, the applicant states that as of March 30, 2000, the house is used as a parsonage for one of its ministers of religion. (Dept. Ex. No. 1; Tr. p. 32)

12. I take administrative notice of the fact that the Department has determined that the applicant is a religious organization. The Department granted the applicant a property tax exemption pursuant to Docket No. 86-60-41. (Applicant's Ex. No. 1; Tr. p. 13)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the authority granted by the Constitution, the legislature has enacted exemptions from property tax. At issue is the religious exemption found at 35 **ILCS** 200/15-40.

That portion of the statutes exempts certain property from taxation in part as follows:

§ 15-40. Religious purposes, orphanages or school and religious purposes. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Property owned by a church and used as a parsonage or monastery was taxable prior to 1957. See People ex. rel. Carson v. Muldoon, 306 Ill. 234 (1922), People ex rel. Pearsall v. Methodist Episcopal Church, 315 Ill. 233 (1925)

The Illinois Supreme Court in McKenzie v. Johnson, 98 Ill.2d 87 (1983) had an opportunity to address the 1957 amendment to the statute and held that the provision granting an exemption for a parsonage used primarily for religious purposes was constitutional. The court also required that the parsonage must reasonably and substantially facilitate the aims of religious worship because the pastor's religious duties require that he live in close proximity to the church or because the parsonage has unique facilities for religious worship and instruction or is primarily used for such purposes.

Roy and Mary Hamrick moved into the house on the subject property on July 21, 1999. Mary Hamrick is a commissioned Minister of Religion. She was elected to be a teacher by the applicant on June 14, 1999. She is listed on the official teacher roster of the synod as a minister of religion. Roy Hamrick is a ministry student at Concordia, a Lutheran seminary in St. Louis.

The parsonage at issue was lived in by the Hamricks in 1999. The credible testimony of the representative of the applicant establishes that it was never intended that this was to be a leasehold situation and in fact the applicant only executed the lease because it thought the forms of the Department required a written lease. The Hamricks never paid the rent specified in the lease. The applicant states that as of March 30, 2000, there is no longer a "lease" document for occupancy of the house, and that it is used as a parsonage for one of the ministers of religion. That situation is no different than what really happened in 1999.

Once the applicant purchased the building on the parcel at issue, it began to renovate and make habitable the house. Illinois Courts have consistently held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex. rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11(1924); In re. Application of County Collector, 48 Ill.App.3d 572 (1st. Dist. 1977); and Weslin Properties Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987). I therefore conclude that after the applicant purchased the property the applicant cleaned, landscaped, and repaired the premises and was in the process of adapting said property for exempt use.

For the foregoing reasons, I recommend that Madison Parcel Index No. 13-2-21-33-12-201-031 be exempt from taxation for the period of March 1, 1999 through December 31, 1999, or 84% of the 1999-assessment year, the period of time the applicant owned it.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
September 7, 2001